IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11979 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Versus

RAMESHCHANDRA GIRDHARLAL RAMI

Appearance:

MR HS MUNSHAW for Petitioner

MR AV PRAJAPATI for Respondent

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 23/01/2002

ORAL JUDGEMENT

This petition is filed by Ahmedabad Municipal Transport Service (hereinafter referred to as "AMTS")

against the judgement and award of the Industrial Tribunal, Ahmedabad (hereinafter referred to as "the Tribunal") in Reference (IT) No.137 of 1992 dated 22.6.2001 whereby the learned Member of the Industrial Tribunal has quashed and set aside the order passed by the petitioner, AMTS dated 14.5.1991 whereby the respondent workman was taken in service treating him to have joined afresh. The learned Member has substituted the punishment by stoppage of five increments with future effect. The learned Member also ordered that the period from 11.2.1991 to 14.2.1991 be treated as on duty, but no wages shall be allowed for the same.

2. The facts of the present case are that the respondent workman who had joined services of the petitioner, AMTS in the year 1962 was found to have indulged in irregularities on 12.1.1990. It was was found that he was carrying in his leather bag 'used tickets' of various denominations, totalling to Rs.16.70 and his cash was also found to be in excess by Rs.32.70. Having held departmental inquiry, the authorities passed an order of dismissal on 11.2.1991. The respondent workman filed an appeal before the appellate committee. The appellate committee after taking into consideration various aspects of the matter including the length of service, i.e. from 1962 to the date of incident, substituted the order of dismissal by an order of reinstatement in service as a fresh appointee and that the workman will be paid the lowest of the pay scale.

3. Being aggrieved of the order of the appellate committee, the respondent workman approached the Industrial Tribunal by present proceedings. The learned Member of the Tribunal after hearing both the sides exercised his discretion conferred under section 11A of the Industrial Disputes Act, 1947. The said exercise is undertaken by the learned Member without taking into consideration two judgements of the Honourable the Apex Court, viz. (i) in the matter between Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) & others v. Secretary, Sahkari Noukarara Sangha and others, reported in (2000) 7 SCC 517, wherein the Honorable the Apex Court has held in terms that the Labour Court cannot substitute the penalty imposed by the employer in cases of misconduct wherein the employer has exercised its discretion on proved misconduct in domestic inquiry. Learned advocate Mr.Munshaw relied upon para 6 of the judgement which reads as under :

"6. As stated above, the learned Single Judge and the Division Bench in writ appeals confirmed

the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled-for sympathy and reinstating the employees in service. Law on this point is well settled. (Re: Municipal Committee, Bahadurgarh v. Krishnan Behari) In U.P.SRTC v. Basudeo Chaudhary this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from services on the ground that the alleged misconduct of the conductor was an attempt to cause loss or Rs.65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering @ Rs. 5.35 per head and also by making entry in the waybill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs.2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corpn. Ltd. v. Kala Singh this Court considered the case of a workman who was working as a Dairy Helper - cum - Cleaner for collecting milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplied in the milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held (at SCC pp.161062, para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the ID Act to grant relief with minor penalty."

4. Mr.Munshaw, learned advocate submitted that in para 7 the Apex Court has observed as under:

"7. In view of the aforeaid settled legal position, the High court materially erred in confirming the directions given by the Labour Court in reinstating the respondent workmen with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and therefore, it can be observed that they have rendered several years of service without any blemish and to some extent, there was lapse on the part of the management."

5. Mr.Munshaw, learned advocate also relied upon another judgement of the Apex Court in the matter between Karnataka State Road Transport Corporation v. B.S. Hullikatti reported in (2201) 2 SCC 574 to contend that it is a misplaced sympathy by the Labour Court in cases when it is found on checking that the bus conductors have either not issued tickets to large number of passengers though they should have or have issued tickets of lower denomination knowing full well the correct fare to be charged. Mr.Munshaw, learned advocate relied upon the observations made in para 7 of the said judgement which read as under:

"7. In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be entitled to any back wages at all but he would be entitled to the retiral benefits."

6. Mr.A.V. Prajapati, learned advocate for the respondent workman submitted that the petitioner is served with process of rule and though he has not filed any affidavit in reply to this petition, he is ready with the matter. Mr.Prajapati, learned advocate invited attention of the Court to Annexure 'B', 'the findings of the Inquiry Officer dated 23.1.1990' and submitted that may be that the respondent workman in his cross examination has accepted the fact that in the bus where the respondent workman was conductor, his leather bag contained 'used tickets' but what is important is that, 'no passenger was found without ticket'; therefore, the present judgement and award of the Industrial Tribunal does not warrant an interference by this Court. Mr.Prajapati, who was alive to the aspect of the matter submitted that 'the charge against the respondent workman

was that from his leather bag 'used tickets' to the extent of Rs.16.70 paise of various denominations were found and cash was found to be excess to the extent of Rs.32.70 paise' could not defend the matter. Mr.Prajapati was also successfully alive to the other aspect of the matter that in the inquiry report it is clearly recorded that the charge of having found 'used tickets' to the extent of Rs.16.70 paise and excess cash to the extent of Rs.32.70 paise was proved, was not possible to be dislodged and until that is dislodged the exercise of discretion by the learned Member cannot be justified.

7. Mr.Prajapati, learned advocate for the respondent submitted that the Industrial Tribunal has exercised discretion vested in it under section 11A and the same does not warrant any interference at the hands of this Court. But Mr.Prajapati, learned advocate for the respondent workman could not water down the findings recorded by the learned Member of the Industrial Tribunal that, "conclusion of the Inquiry Officer was not perverse" and that the findings of the Inquiry Officer were accepted by the Industrial Tribunal in toto.

8. In view of the aforesaid discussion interference by the Industrial Tribunal with the order passed by the employer is unwarranted. There is no reason for allowing this order to stand. The same is hereby quashed and set aside. Rule is made absolute. No order as to costs.

9. At this stage, Mr.Prajapati, learned advocate for the respondent workman made a reasonable request that the petitioner authorities be directed to release the retiral benefits to the respondent workman at the earliest. Mr.Munshaw submitted that he will impress upon the authorities to release the retiral benefits of the respondent on or before 28.2.2002.

(Ravi R. Tripathi, J.)
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